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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,401

03/15/2004

Jehan Clements

02013-06034s

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11/28/2012

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EXAMINER

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ART UNIT

PAPER NUMBER

3715

MAIL DATE

DELIVERY MODE

11/28/2012

PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JEHAN CLEMENTS

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Appeal 2010-009514  
Application 10/801,401  
Technology Center 3700

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Before: PHILLIP J. KAUFFMAN, MICHAEL L. HOELTER, and  
HYUN J. JUNG, *Administrative Patent Judges*.

KAUFFMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 21-24, 26-29, and 31-34. Appellant's representative presented oral argument on November 5, 2012. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### *The Invention*

Appellant's claimed invention relates to a system, method, and kit for producing a storytelling book. Spec. 2:2-7. Claim 21, reproduced below, is illustrative of the claimed subject matter:

21. A system for producing a storytelling book, comprising:

a software program in a computer having subroutines for

(a) accepting by the computer a first set of inputs from a user in a first blank story book screen, the first set of inputs comprising title information and author information and one or more images;

(b) automatically generating by the computer a cover page for printing on a first leaf's front-side from the first set of inputs, wherein the cover page includes at least one of title information, author information, and one or more images;

(c) automatically generating by the computer a title page for printing on the first leaf's back-side and a second leaf's front-side, wherein the title page includes the title and author information and a copyright notice information;

(d) accepting by the computer a second set of inputs from the user in a second blank story

book screen, the second set of inputs comprising one or more images and corresponding text;

(e) automatically generating by the computer a first story page from the one or more images from the second set of inputs for printing on the second leaf's back-side and automatically proportionally enlarging the one or more images from the second set of inputs on the first story page to a maximum size that does not overlap margins of the first story page;

(f) automatically generating by the computer a second story page from the one or more images and the corresponding text from the second set of inputs for printing on a third leaf's front-side, wherein the one or more images and corresponding text from the second set of inputs, when printed, appear oriented in diametric contraposition to the one or more images on the first story page;

(g) automatically generating by the computer one or more indicia on the title page and first and second story pages for indicating how to assemble the second story page in diametric contraposition to the first story page; and

(h) allowing by the computer the user to print the cover page, the title page, and the first and second story pages, wherein the first story page and second story page are printed for binding the second story page in diametric contraposition to the first story page.

*Evidence Relied Upon*

Schubert	US 5,127,879	Jul. 7, 1992
Schach	US 5,397,156	Mar. 14, 1995
Scocca	US 6,126,202	Oct. 3, 2000
Clements	US 6,210,172 B1	Apr. 3, 2001
Gonzales	US 2002/0161603 A1	Oct. 31, 2002

*The Rejections*

The following rejections are before us on review:

1. Claims 21-24 and 26-29 under 35 U.S.C. § 103(a) as unpatentable over Gonzales, Scocca, Clements, and Schubert. Ans. 3.
2. Claims 31-34 under 35 U.S.C. § 103(a) as unpatentable over Gonzales, Scocca, Clements, Schubert, and Schach. Ans. 9.

ANALYSIS

*Claims 21-24 and 26-29 over Gonzales, Scocca, Clements, and Schubert<sup>1</sup>*

Appellant presents five arguments that the subject matter of claim 21 would not have been obvious over Gonzales, Scocca, Clement, and Schubert: 1) that the proposed combination does not disclose all of the limitations of claim 21; 2) that Gonzales is nonanalogous art; 3) that the proposed combination impermissibly changes the principle of operation of Gonzales; 4) that Clements teaches away from the proposed combination; and 5) that the proposed combination is not based upon a sufficient rationale. App. Br. 17-18, 28-30. We address these arguments in turn.

*1) All Limitations*

Appellant makes several arguments that the proposed combination does not disclose all of the limitations of the claimed subject matter. App. Br. 11-14, 17-27; Reply Br. 5-7.

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<sup>1</sup> Appellant presents a single argument for claims 21-24 and 26-29. App. Br. 11-34; Reply Br. 4-10. As such, we select claim 21 as representative and claims 22-24 and 26-29 stand or fall with claim 21. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2011). We note Appellant does not distinguish between the two grounds of rejection. We do not address arguments related to Schach in the first rejection because Schach is not included as a reference in the first rejection.

Appellant argues that the proposed combination does not disclose automatically generating by the computer a: cover page, title page, first story page, and second story page as claimed, because the references operate in a *What You See Is What You Get* (WYSIWYG) manner. App. Br. 12, 18-19. Specifically, Appellant characterizes Gonzales as operating in a WYSIWYG manner, because “content inputted into the templates, once published, appear as they are inputted (*Gonzales*, ¶¶ 0068-0071<sup>2</sup>; Figs. 2, 5 and 6).” App. Br. 12. Appellant contrasts a WYSIWYG approach with that of the claimed subject matter, which calls for “a hard-copy book assembly system with such precise outputs as to generate story pages for printing on particular sides of a paper with specific images enlarged and certain text used on particular sides of the paper where the printed and bound result has the second story page in diametric contraposition to the first story page.” Reply Br. 5-7 (quotation at 6); *see also* App. Br. 12, 19-21.

Such contention is unpersuasive because it does not address the rejection as articulated by the Examiner. The Examiner did not find that Gonzales discloses some action after creation of the template that corresponds to automatically generating as claimed. Rather, the Examiner found that the conversion of inputted information to a template format corresponds to automatically generating as claimed. *See, e.g.*, Ans. 4. This finding is well supported by the reference, which discloses that content is inputted to the system and then the user may select to display the

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<sup>2</sup> These cited portions describe that an author may create, edit, or delete an article. We fail to see, and Appellant fails to cogently explain how such disclosure demonstrates error in the Examiner’s finding that Gonzales’s conversion of inputted information into a selected template corresponds to automatically generating a page as claimed.

information in the layout of the select template. *See e.g.*, Gonzales, para. [0099] (module 312 formats the article in accordance with a template), fig. 3A; para. [0194] (the content management application displays the input in the layout of the selected template), fig. 4. By altering the input to fit the template, Gonzales's system has automatically generated by the computer<sup>3</sup> a page<sup>4</sup> from the inputted content.<sup>5</sup>

Appellant contends that Gonzales discloses a general web page publishing system and method for publishing, but does not disclose a storytelling book or blank story book screens as claimed. App. Br. 11-12, 20-21; Reply Br. 5.

Regarding a story telling book, even assuming, arguendo, that the recitation in the preamble of a "storytelling book" is entitled to patentable weight, Appellant's assertion is unconvincing because the Examiner did not rely upon Gonzales as disclosing a storytelling book. Ans. 5 ("What Gonzales fails to teach is where the published book is a story book"). Rather, the Examiner relied upon a combination of the references for disclosure of a storytelling book. *See* Ans. 5-9. Appellant's contention is unpersuasive both because it does not address the rejection as articulated, and because it is an individual attack upon the reference (Gonzales). *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*,

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<sup>3</sup> Gonzales's system is computer implemented. Gonzales, para. [0015]; fig. 1.

<sup>4</sup> "Page," as used in Appellant's disclosure, refers to both a printed page and matter to be printed. Spec. 3:4-5; *see also* Spec. 2:10, and 3:9 (referring to the software producing a page); fig. 1.

<sup>5</sup> Because the rejection relies upon Gonzales for disclosing automatically generating as claimed, we need not address Appellant's contention that Clements operates in a WYSIWYG manner and thus does not disclose automatically generating as claimed. *See* App. Br. 25; Reply Br. 6.

642 F.2d 413, 425 (CCPA 1981) (one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references)).

Regarding blank story book screens, the Examiner interprets, and we agree, that the content of the input is not functionally related to the substrate and therefore is nonfunctional descriptive material so that a blank input screen corresponds to a blank story book screen as claimed. *See* Ans. 23-24; *see also In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). Based upon this interpretation, the Examiner found that Gonzales's input screens correspond to blank story screens as claimed. Ans. 3, 22-23. Appellant's naked assertion that Gonzales does not disclose a blank story book screen, unsupported by a cogent explanation or evidence, fails to point out the error in this finding. *Contra*. App. Br. 12, 19, 20-21; Reply Br. 5-6.

Appellant contends that claim 21 calls for automatically generating indicia on the title page and the first and second story pages indicating how to assemble the second story page in diametric contraposition to the first story page, and argues that with regard to this limitation, the Examiner mistakenly interpreted the computer program as the substrate, when in fact, the pages are the substrate. Reply Br. 8. Further, according to Appellant, this indicia (the assembly instructions) is printed matter that is functionally related to the substrate (the pages). Reply Br. 7-9. Specifically, Appellant contends

each indicia bear a direct relationship to other indicia appearing on other pages so as to orient the first and second story pages in diametric contraposition. Likewise, the substrate depends on the indicia, without which assembly of the pages of the storytelling book would not be in diametric contraposition. Said another way, the desired result of a storytelling book



whose pages are assembled in diametric contraposition would not be achieved without the indicia.

Reply Br. 9.

For the reasons that follow, this line of argument is unpersuasive.

First, claim 21 calls for indicia regarding assembly to be on the title page and first and second story book pages. Thus, some portion of the indicia is on the title page rather than on the first and second story pages, yet the indicia permits the second story page to be assembled in diametric contraposition. The significance is that the entire indicia need not be on the page being assembled, undermining Appellant's assertion that the indicia must be on the page being assembled.

Second, contrary to Appellant's assertion, the pages may be assembled in diametric contraposition without the indicia. The Specification does not state that the indicia are necessary for assembly; rather, the Specification states that the generated pages "may include" indicia indicating the sequence and orientation of the first and second set of pages. Spec. para. 2:7-9. Such disclosure indicates that the instructional indicia is optional, and therefore the pages may be assembled without the indicia. Also supporting this interpretation, claim 1<sup>6</sup> calls for pages to be oriented in diametric contraposition, but does not call for indicia indicating how to so orient the pages, demonstrating that instructional indicia are not necessary for assembly in the claimed orientation.

Appellant also cites *Gulack* in connection with whether printed matter is "functionally related to the substrate." See Reply Br. 8 (citing *In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983)). However, in *Gulack*, the court

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<sup>6</sup> Though claim 1 is not before us on review, it is part of Appellant's original disclosure.

held there was a functional relationship between a particular sequence of digits (descriptive material) displayed on the outside surface of a band (a substrate) because the digits were related to the band in two ways: “(1) the band supports the digits; and (2) there is an endless sequence of digits—each digit residing in a unique position with respect to every other digit in an endless loop. Thus, the digits exploit the endless nature of the band.” *In re Gulack*, 703 F.2d at 1386-1387.

While Appellant’s substrate (title page and the first and second story pages) supports the indicia by virtue of the indicia being printed on the substrate, this is true of any substrate having indicia printed on it, and this fact alone is insufficient to demonstrate a new and unobvious functional relationship between the printed matter and the substrate under *Gulack*. We fail to see how the indicia of claim 21 exploit Appellant’s substrate. As explained *supra*, the instructions need not be on the substrate in order for the pages to be placed in diametric contraposition as claimed. For example, a user may be able to assemble the pages without the indicia (perhaps from prior experience), or the indicia might be printed on a substrate other than the title page and first and second story pages (e.g., a separate instructional page).

Here the title page and first and second story pages do not depend on the indicia to achieve the desired result of assembling the pages in diametric contraposition, while in contrast, “[i]n *Gulack*, the printed matter would not achieve its educational purposes without the band, and the band without the printed matter would similarly be unable to produce the desired result.” *In re Ngai*, 367 F.3d at 1339 (distinguishing the functional relationship in *Gulack* from the nonfunctional relationship between a kit and its instructions

where “the printed matter [instructions] in no way depends on the kit, and the kit does not depend on the printed matter.”). Therefore, the claimed indicia is not functionally related to the substrate and thus will not distinguish the invention from the prior art in terms of patentability. *See In re Ngai*, 367 F.3d at 1339.<sup>7</sup>

Therefore, Appellant’s argument that the proposed combination fails to disclose all the limitations of claim 21 is unpersuasive.

*2) Nonanalogous art*

Appellant argues that Gonzales is nonanalogous art for two reasons: one, because Gonzales discloses, “a method for web publishing and not book publishing,” and two, because Gonzales is a complex system, difficult for a student to use. App Br. 28.

First, Appellant’s characterization that Gonzales is a method for web publishing unfairly narrows the disclosure of the reference. While Gonzales’s system is particularly suited for management of content that may be published on a web site, the system may be employed for the publishing of hard copy material, such as a brochure, magazine, or print on demand marketing and business communications. Gonzales, paras. [0003], [0032], [0117]; Ans. 5, 10; *see also* App. Br. 19 (acknowledging Gonzales discloses publishing of hard copy material). Further, the Specification does not provide a lexicographical definition of “book,” which is commonly

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<sup>7</sup> Given this claim construction, we need not further address Appellant’s arguments with regard to indicia as disclosed by Scocca, and Clements. *See* App. Br. 23-26. Further, even if the Examiner mistakenly referred to the computer program as the substrate instead of the pages, the Examiner’s conclusion that the indicia is nonfunctional descriptive material is correct.

understood to mean a written document.<sup>8</sup> Therefore, Gonzales, which addresses written documents like brochures and magazines, would be relevant to a person of ordinary skill in the art considering a problem related to book publishing. *See* App. Br. 29 (characterizing the claimed subject matter as directed to book publishing); Spec. 2:2-7; *see also In re Icon Health & Fitness, Inc.*, 496 F.3d 1374, 1380 (Fed. Cir. 2007) (“A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.” “In other words, ‘familiar items may have obvious uses beyond their primary purposes.’”)(internal citations omitted).

Second, Appellant's contention that Gonzales is complex and difficult for a student to use is not commensurate in scope with claim 21, which does not contain a limitation regarding use by a student or ease of use generally. More importantly, as the Examiner correctly points out, the proper inquiry regarding whether a reference is analogous art is whether that reference is in the same field of endeavor or reasonably pertinent, not whether the reference is difficult to use. *See* Ans. 26-27; *see also In re Kahn*, 441 F.3d 977, 986-87 (Fed. Cir. 2006) (citing *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992)) (“The analogous-art test requires that the Board show that a reference is either in the field of the applicant's endeavor or is reasonably pertinent to the problem with which the inventor was concerned in order to rely on that reference as a basis for rejection.”)

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<sup>8</sup> “Book: a written document,” n., Oxford English Dictionary (1989) *available at* [www.OED.com](http://www.OED.com), last accessed Nov. 9, 2012.

Therefore, Appellant's contention that Gonzales is not analogous art is unpersuasive.

*3) Change in Principle of Operation*

According to Appellant, the proposed modification would change the operating principle of Gonzales in two respects. App. Br. 29-30. First, pagination (how information and content appears and is arranged in a printed book page) is critical to book publishing while in contrast, web page publishing, such as in Gonzales, is unconcerned with pagination. *Id.* Second, such modification to automatically generate pages violates Gonzales's "*what you see is what you get*" functionality. *Id.*

Appellant's contentions are based upon the characterizations that Gonzales is only concerned with web publishing and operates in a WYSIWYG manner. However, as detailed, *supra*, Gonzales discloses publishing written documents so that no change in the principle of Gonzales's method of operation is needed, and Gonzales discloses automatically generating pages as claimed. Consequently, Appellant's argument is unconvincing.

*4) Teaching Away*

Appellant argues that Clements' disclosure of using one-sided insertion pages would have led a person of ordinary skill in the art in the divergent direction of printing on one side of a sheet of paper, and therefore teaches away from the use of two-sided printing as claimed. App. Br. 30-31; Reply Br. 7.

Clements discloses that insertion pages are preferably one-sided, and is silent regarding the use of two-sided printing. Clements, col. 6, ll. 24-26. A disclosure that one-sided printing is preferred implies that two-sided

printing is possible, but not preferred. Such disclosure does not teach away from utilization of two-sided printing. *See In re Beattie*, 974 F.2d 1309, 1312-13 (Fed. Cir. 1992) (holding that the disclosure of a preferred alternative did not obliterate and teach away from a combination utilizing the non-preferred alternative; rather, the alternatives may co-exist); *see also In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (“The prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed in the '198 application.”). In view of this, Appellant’s argument is unconvincing.

5) *Rationale*

Appellant argues that the Examiner has not provided a sufficient rationale for the proposed combination. App. Br. 31-34. Specifically, Appellant contends that the rationale provided by the Examiner amounts to conclusory statements, and does not “explain why one of ordinary skill in the art at the time of the invention would have a reason to combine this group of WYSIWYG-type disclosures to create” the claimed subject matter. App. Br. 32-33 (quotation at 33).<sup>9</sup>

This argument, similar to previous arguments, is premised on the characterization that Gonzales operates in a WYSIWYG manner. As explained in the first argument, *supra*, such characterization is inaccurate.

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<sup>9</sup> Appellant also contends that the rationale provided is not found within any of the references and that Clements teaches away from the proposed combination. App. Br. 34. The rationale need not be found within the references. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (Rejecting the rigid requirement of a teaching, suggestion or motivation to combine known elements in order to show obviousness). The teaching away argument has been previously addressed.

Appellant's assertion that the Examiner's rationale is conclusory does not directly address each of the Examiner's reasons for the proposed combination. Given this, Appellant's assertion that the rationale is conclusory is itself a conclusory assertion, unsupported by a cogent explanation of how such rationale is in error.

Regarding combining Scocca and Gonzales, the Examiner concluded that:

it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have adapted the publishing templates of Gonzales to include the title and author information on the title page; wherein the title page, and first and second story pages include one or more indicia for indicating how to assemble the second story page, as taught in Scocca; in order to assist an amateur author in publishing a professional looking storybook; and to adapt the printing system and method of Gonzales to allow a user to print the first story page and second story page for binding, taught by Scocca, in order to allow an amateur publisher to print and bind "proof" or "draft" copies of a storybook themselves, without requiring outside assistance or additional postage [Claims 21 & 26].

Ans. 6.

The indicia for assembly, and title and author information are nonfunctional descriptive material and therefore the modification to include this information does not require a rationale. Regarding the modification to allow a user to print pages for binding, Gonzales discloses a system that permits documents to be formatted from templates and printed. *See* Gonzales, paras. [0003], [0032], [0099], [0117]; Ans. 3-5, 8, 10. Scocca's storybook publishing kit must be mailed in for binding. Scocca, col. 1, ll. 5-8; Ans. 5, 11. In light of this, the Examiner's conclusion that a person of ordinary skill would recognize that such modification has the benefit of

permitting “an amateur publisher to print and bind ‘proof’ or ‘draft’ copies of a storybook themselves, without requiring outside assistance or additional postage” is reasonable. *See* Ans. 6.

Regarding combining Gonzales, Scocca and Clements, the Examiner concluded that:

it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used the templates taught by Gonzales to produce the storytelling book having diametrically opposed story pages, having sets of pages with identical illustrations but with one set omitting the narrative, as taught by Clements '172, in light of the teachings of Scocca, in order to easily allow a user to specify, preview, and remotely produce the storybook document in volume [Claims 21 & 26].

Ans. 7.

Clements discloses a “storytelling book invention wherein the facing book pages are ordered in diametric contraposition.” App. Br. 13; *see also* Clements, col. 6, ll. 54-57; fig. 5; Ans. 7. Gonzales discloses that content is inputted to the system and then the user may display the information in the layout of the selected template. *See e.g.*, Gonzales, para. [0099] (module 312 formats the article in accordance with a template), fig. 3A; para. [0194] (the content management application displays the input in the layout of the selected template), fig. 4. A person of ordinary skill in the art would recognize that further modification of the Gonzales and Scocca combination so that the templates are story pages in diametrical contraposition as taught by Clements would allow producing such storybooks in volume.

The Examiner further reasoned that such a modification could be seen as automation of the production of Clements’s storytelling book. Office Action dated Mar. 4, 2009, at 10. Appellant contends that this is not the case because Clements utilizes insertion pages or page holders and one-sided



pages while the claimed subject matter does not. App. Br. 25. In other words, Appellant asserts that the change from one to two-sided printing so that page holders are not required is a nonobvious distinction between the claimed subject matter and the automation of the production of Clements's storytelling book.

Generally, using automation for manually-operated methods is commonplace and uses the common sense of an ordinarily skilled artisan. *Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007).<sup>10</sup> Appellant presents no evidence that the modification at issue was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *See Leapfrog.* at 1162; *see also* App. Br. *passim*; Reply Br. *passim*. Nor does Appellant's disclosure state that the claimed system produces unexpected results. Spec. *passim*. Therefore, the modification is obvious because it is the product of ordinary skill and common sense and not innovation. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007).

Appellant also mentions the rationale for the addition of copyright information. App. Br. 32. Such information is nonfunctional descriptive material that cannot serve to patentably distinguish the claimed subject matter over the prior art. Therefore, analysis of this rationale is not required.

Appellant argues that the Examiner has used impermissible hindsight because the proposed combination includes non-analogous art, the proposed combination requires a change in principle of operation, or the cited references do not give any reasons for the proposed combination. App. Br.

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<sup>10</sup> Notably, Clements's process involves some automation, such as generating a corresponding insertion page utilizing a graphical computer program. Col. 6, ll. 27-32.

18, 29, 30, and 34. We have addressed *supra* the non-analogous art argument and asserted change in principle of operation. As for reasons within the references for the proposed combination, there is no requirement that the references contain an explicit reason for making the proposed combination. Thus, we are not persuaded impermissible hindsight was required for the Examiner's proposed combination.

Appellant has not cogently explained how the Examiner's reasonable rationale is insufficient. As such, we sustain the rejection of claim 21 and claims 22-24 and 26-29 fall with claim 21.

*Claims 31-34 over Gonzales, Scocca, Clements, Schubert, and Schach*

Appellant presents a single argument for claims 31, 32, and 34 and a separate argument for claim 33. App. Br. 11-34; Reply Br. 4-10. Therefore, we address independent claim 31 as representative of claims 32 and 34 and we separately address claim 33. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Claim 31 is directed to a kit for producing a storytelling book that includes "a front cover that houses the printed cover page and binds with the printed title page, the first story page, the second story page, and a back cover."

The Examiner concluded that it would have been obvious to further modify the Gonzales, Scocca, Clements, and Schubert combination so that the kit includes a front and back cover as taught by Schach, "in order to provide specialized, more durable paper to use for the cover of a storybook." Ans. 10.

Appellant argues that, in contrast to Examiner's finding, Schach does not teach a front cover that houses a printed cover page or binds with a

printed title page because Schach does not include a printed cover page and a printed title page. App. Br. 26-27. As the Examiner correctly points out, the claimed printing is nonfunctional descriptive material and cannot serve to patentably distinguish the claimed subject matter. *See* Ans. 26. Further, the proposed combination does not rely upon Schach for the printed cover and title pages. *See* Ans. 4, 5-6.

Similarly, Appellant argues that Schach does not disclose indicia as claimed. App. Br. 27; Reply Br. 9. As explained, *supra*, such indicia is not functionally related to the substrate and thus cannot serve to patentably distinguish the claimed subject matter. Further, Appellant's argument is nonresponsive because the proposed combination does not rely upon Schach for assembly indicia. *See* Ans. 5-6.

Appellant also repeats the arguments for claim 21, but does not identify a distinction between claim 31 and claim 21 that alters our analysis of the arguments analyzed with regard to claim 21, *supra*. App. Br. 11-34; Reply Br. 4-10. Thus, those arguments are unconvincing here as well.

With regard to claim 33, Appellant argues that Scocca does not disclose page numbers as claimed. App. Br. 24. Here again, Appellant seeks to patentably distinguish the claimed subject matter based upon nonfunctional descriptive material.

Consequently, we affirm the rejection of claims 31-34.

## DECISION

We affirm the Examiner's decision to reject claims 21-24, 26-29, and 31-34.

Appeal 2010-009514  
Application 10/801,401

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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